

# **EXHIBIT 28**

**DOCUMENT SOUGHT TO BE  
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<p style="text-align: right;">Page 74</p> <p>1 Q. So December 31st, 2007, would be the 2 beginning of the relevant period? 3 A. No, I mean the later part of 2007. 4 Q. Okay. Without a specific date, just 5 starting in November of 2007; is that correct? 6 A. It is my understanding that sometimes 7 platforms like this are announced over maybe a 8 period of a few days in different stages. 9 So it's my understanding that somewhere 10 around November 2015 is the time in which the 11 Android platform was launched, at least in -- in 12 some capacity. 13 Q. Do you mean 2007? 14 A. 2007. Yes. Sorry. 15 Q. And how did you determine the end of the 16 relevant time period? 17 A. This was based on input from counsel. 18 Q. And what input from counsel did you 19 receive? 20 A. I instructed the Analysis Group to ask 21 counsel to determine what time period was relevant 22 for this case, and my understanding is that counsel 23 indicated that 2007 to 2009 was the relevant 24 period. 25 Q. And do you know the specific date within</p>	<p style="text-align: right;">Page 76</p> <p>1 develop Android apps would be. 2 That -- that time period was given to you 3 by counsel? 4 A. Yeah, I was not asked to opine on the 5 relevant time period. I was given a relevant time 6 period as part of my assignments. 7 Q. Okay. And so just to clarify -- 8 A. Uh-huh. Uh-huh. 9 Q. -- did you review any additional 10 materials in forming your opinion about the 11 relevant time period or -- or not forming your 12 opinion about the relevant time period -- about 13 determining the relevant time period? 14 A. Again, the relevant time period was given 15 to me as part of my assignments, and I do not 16 believe that I considered other documents that are 17 not at least in the report -- 18 Q. Okay. And -- 19 A. -- relating to that -- to that issue. 20 Sorry. 21 Q. So the next opinion I wanted to ask you 22 about is you -- you opine in -- let's see, 23 page 5, paragraph 12 -- 24 A. Uh-huh. 25 Q. -- and at the very top that</p>
<p style="text-align: right;">Page 75</p> <p>1 2009 that the relevant time period ends? 2 A. Since the survey does not measure the 3 specific dates in which developers started offering 4 apps for the Android platform, it only measures the 5 year, I would not be able to have that level of 6 precision. So I -- I was interested in a -- in a 7 year window without maybe a -- the necessary 8 specific date within that year. 9 Q. Do you know how Orrick determined that 10 the relevant time period was 2007 to 2009? 11 A. It is my understanding that this was 12 based on their understanding of the case. 13 Q. And did you do anything to confirm that 14 their understanding of the case is correct for -- 15 for your purposes which are from a research 16 perspective? 17 A. My assignment was to determine whether 18 to the -- to the extent to which Dr. Simonson's 19 survey can be used to make conclusions about the 20 marketplace and conditions in the years 2007 to -- 21 to 2009. Since this was my assignment, I took that 22 as my assignment. 23 Q. So you didn't undertake an independent 24 evaluation of what the relevant time period for 25 measuring application developer's motivations to</p>	<p style="text-align: right;">Page 77</p> <p>1 "Dr. Simonson's survey does not attempt to create 2 the necessary historical context that affected 3 developers' decisions following the introduction of 4 the Android platform over eight years ago." 5 Can -- can you -- is that -- is that 6 correct? Did I read it accurately? 7 A. Yes. 8 Q. Can you explain what you mean by 9 historical context in that sentence? 10 A. Uh-huh. Uh-huh. Uh-huh. 11 When a developer decides whether to start 12 developing apps for a specific platform, there are 13 many parameters that should be relevant to this 14 decision. 15 For example, one of the platforms that 16 are currently available on the markets, what are 17 their relevant shares and the number of end users 18 using those -- those platforms. What is the 19 committee of developers who develop apps for this 20 platform. What is the number -- what is the number 21 of apps offered in this platform. What language 22 did this platform -- do these platform use. 23 From the developer's perspective also, 24 some relevance constructs include the -- their 25 hourly rates, the amount of time it would take them</p>

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<p style="text-align: right;">Page 82</p> <p>1 A. I did not try to reach an opinion as to 2 which would be suggestions to improve the survey. 3 Q. But sitting here today, do you -- do you 4 have a suggestion for how Dr. Simonson could have 5 created the necessary historical context in that 6 question? 7 A. I -- in order to be able to reach an 8 opinion on this, I would need to think about this 9 carefully, review some relevant literature and 10 spend a bit of time thinking about this problem. I 11 don't think I'm prepared to offer an opinion on the 12 spot, without having a chance to reflect on this a 13 little bit longer. 14 Q. Do you know if there is literature that 15 addresses how to create historical context in 16 question design? 17 A. There is literature that is -- that talks 18 about how to help respondents recall previous 19 events more precisely. 20 Q. And is it -- do you know if the term 21 "historical context" is used in that literature? 22 A. I would have to go back to the literature 23 to check that. 24 Q. Sure. 25 So I may have been repeating myself, but</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Not exactly. I'm -- I mean that the 2 historical context is going to include descriptions 3 of certain factors that might impact what 4 developers consider in their decision. 5 Q. Okay. So is the -- you might have 6 already answered this. But is the -- would you say 7 the popularity of a certain programming language is 8 relevant to the historical context -- the 9 historical context for an application developer's 10 decision to develop on a mobile platform? 11 A. I would say that that's -- for a given 12 developer, their familiarity with various languages 13 is likely to be a factor that describes the context 14 of the decision and that is likely to be relevant 15 for their decision. Again, depending on the 16 context. 17 Q. So it seems like the developer has to be 18 the one that provides the context; is that true? 19 Like the developer has to be the one who 20 tells you "These are the things that I considered 21 when I made my decision"? 22 MS. FEEMAN: Object to form. 23 THE DEPONENT: So the context is 24 different from the factors considered. The context 25 describe the -- the parameters of the choice, if</p>
<p style="text-align: right;">Page 83</p> <p>1 you listed a lot of factors that you believe would 2 be relevant to an application programmer's decision 3 to develop applications. 4 Are -- is -- is there -- I guess, how did 5 you come up with that list? 6 A. Uh-huh. 7 So the list that -- that I mentioned were 8 just examples of factors that one could argue could 9 reasonably be relevant to the app developers. I 10 didn't make any claim that they were relevant. 11 These are just factors that are related to the -- 12 the expected demand that the developer might -- 13 might expect to receive if they joined the platform 14 and the expected costs that they would incur by 15 joining the platform. 16 Q. Okay. 17 A. And, again, as I mentioned earlier, I 18 reached this -- this list, which may not be 19 exhaustive, just based on the basic nature of the 20 decision that is being made here by developers. 21 Q. So is that -- it seems to me like you're 22 defining historical context as whatever factors 23 would be relevant to the decision-maker during that 24 time period. 25 Is that an accurate assessment?</p>	<p style="text-align: right;">Page 85</p> <p>1 you want. 2 If I am a developer, I have a choice 3 between joining a platform versus not joining the 4 platform. There are several -- several factors 5 that are going to impact the attractiveness of 6 these two options, and the choice context is going 7 to drive these factors which, therefore, is going 8 to drive what I -- what I'm going to consider when 9 making my decision and what decision I am going to 10 reach as a developer. 11 Q. (By Ms. Karwande) So can you explain what 12 you mean by choice context in that -- the answer you 13 just gave? 14 A. The -- again, the choice context captures 15 the relevant dimensions that could impact the 16 attractiveness of the option to -- to develop for 17 that platform and the attractiveness of the option 18 not to develop for the platform. 19 Q. So if you were to describe the choice 20 context for application developers, how would you 21 describe it? 22 A. Again, I was not asked to think of a way 23 to describe the context. I was reacting to the 24 survey. I would need to spend a bit more time to 25 reach an opinion as to how I would describe the</p>

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<p style="text-align: right;">Page 134</p> <p>1 in his survey; is that accurate?</p> <p>2 A. I stated in my report, as to the</p> <p>3 16 percent who did report Android development</p> <p>4 experience between 2007 and 2009, due to the</p> <p>5 imprecise nature of recall, these respondents would</p> <p>6 be unlikely to accurately recall decision-making</p> <p>7 factors from up to eight years prior to when</p> <p>8 Dr. Simonson's survey was conducted.</p> <p>9 Q. So you would agree that you criticized</p> <p>10 Dr. Simonson's report for not taking recall into</p> <p>11 account?</p> <p>12 A. I point to the fact that there is a</p> <p>13 strong possibility that respondents today may not</p> <p>14 recall the factors that influenced their decisions</p> <p>15 up to nine years ago.</p> <p>16 Q. And do you have expertise in --</p> <p>17 A. Or eight -- eight years ago -- sorry.</p> <p>18 Q. Sure.</p> <p>19 Do you -- do you have expertise in the</p> <p>20 field of recall?</p> <p>21 A. I have expertise in the field of</p> <p>22 marketing, in general, and I am aware of issues</p> <p>23 with recall. I am not a -- someone who researches</p> <p>24 recall specifically.</p> <p>25 Q. And have you published any papers</p>	<p style="text-align: right;">Page 136</p> <p>1 Analysis gave to you in support of your report?</p> <p>2 A. I believe these article were brought to</p> <p>3 my attention by the team Analysis --</p> <p>4 Analysis Group.</p> <p>5 Q. Okay. So according to your report,</p> <p>6 Dr. Simonson has studied recall and has published</p> <p>7 these two papers.</p> <p>8 Would you consider Dr. Simonson to have</p> <p>9 expertise in the field of recall?</p> <p>10 A. These papers comment on issues relating</p> <p>11 to recall. The first paper -- in both papers, he's</p> <p>12 the last author. The first paper is published</p> <p>13 with -- with eight authors, and the second paper is</p> <p>14 published with three authors. I believe it's a</p> <p>15 little bit of matter of -- of judgment whether he</p> <p>16 would be considered an expert in recall or not.</p> <p>17 One might argue probably both ways.</p> <p>18 Q. So the two other papers that you cite in</p> <p>19 the section on recall --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- and I believe it's -- let's see,</p> <p>22 footnote 36 and footnote 33. Both deal with</p> <p>23 autobiographical questions; is that correct?</p> <p>24 A. Both of these articles include auto- --</p> <p>25 autobiographical events. I believe that's at least</p>
<p style="text-align: right;">Page 135</p> <p>1 addressing recall?</p> <p>2 A. I have not met -- published papers that</p> <p>3 specifically study the issue of recall.</p> <p>4 Q. And isn't it true that Dr. Simonson has</p> <p>5 published two papers related to the study of</p> <p>6 recall?</p> <p>7 I believe you cited them in your report,</p> <p>8 actually. Let's see.</p> <p>9 A. Do you have a specific footnote or</p> <p>10 paragraph?</p> <p>11 Q. Yeah. I think it's paragraphs --</p> <p>12 footnote 37 on page 17.</p> <p>13 And you note that Dr. Simonson has</p> <p>14 studied recall and the factors that influence it,</p> <p>15 including the length of time between an event and</p> <p>16 the evaluation of an event. And then you provide a</p> <p>17 quote.</p> <p>18 A. Yes. These references suggest to me that</p> <p>19 Dr. Simonson is aware of the fact that consumers</p> <p>20 are less likely to recall events that happen in the</p> <p>21 past.</p> <p>22 Q. Did you -- did you review these articles</p> <p>23 when drafting your report?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Were these articles that the team at</p>	<p style="text-align: right;">Page 137</p> <p>1 the one in footnote 36 might also include other</p> <p>2 events which are not autobiographical. But I would</p> <p>3 have to look at this article again to give you a</p> <p>4 precise answer.</p> <p>5 Q. So right now, sitting here, you're not</p> <p>6 sure if that article addresses maybe</p> <p>7 high-involvement decisions?</p> <p>8 MS. FEEMAN: Object to form.</p> <p>9 THE DEPONENT: Sorry. First, I don't</p> <p>10 know the link between non-autobiographical and high</p> <p>11 involvement, so let me answer the question with</p> <p>12 high involvement.</p> <p>13 Q. (By Ms. Karwande) Sure.</p> <p>14 A. As I recall, the article I cite on --</p> <p>15 that I say footnote 33, mentions some context in</p> <p>16 which decisions could be described as high</p> <p>17 involvement. I think I remember a paragraph in</p> <p>18 that article that talks about a meeting between</p> <p>19 President Nixon and some of his collaborators in</p> <p>20 the Water -- in the context of the Watergate</p> <p>21 scandal, and how one of these collaborators made</p> <p>22 some errors in recalling some things that happened</p> <p>23 in these meetings which representatively very</p> <p>24 important to their carriers.</p> <p>25 The article I cited on footnote 36, I</p>

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